

By: Callegari

H.B. No. 628

A BILL TO BE ENTITLED

AN ACT

1
2 relating to contracts by governmental entities and related
3 professional services and to public works performance and payment
4 bonds.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 ARTICLE 1. PUBLIC WORKS PERFORMANCE AND PAYMENT BONDS

7 SECTION 1.01. Section 2253.021, Government Code, is amended
8 by adding Subsection (h) to read as follows:

9 (h) A reverse auction procedure may not be used to obtain
10 services related to a public work contract for which a bond is
11 required under this section. In this subsection, "reverse auction
12 procedure" has the meaning assigned by Section 2155.062 or a
13 procedure similar to that described by Section 2155.062.

14 ARTICLE 2. CONTRACTS BY GOVERNMENTAL ENTITIES

15 SECTION 2.01. Section 11.168, Education Code, is amended to
16 read as follows:

17 Sec. 11.168. USE OF DISTRICT RESOURCES PROHIBITED FOR
18 CERTAIN PURPOSES; EXCEPTION. (a) Except as provided by Subsection
19 (b) or Section 45.109 (a-1) or ~~and~~ (a-2), the board of trustees of
20 a school district may not enter into an agreement authorizing the
21 use of school district employees, property, or resources for the
22 provision of materials or labor for the design, construction, or
23 renovation of improvements to real property not owned or leased by
24 the district.

1 (b) This section does not prohibit the board of trustees of
2 a school district from entering into an agreement for the design,
3 construction, or renovation of improvements to real property not
4 owned or leased by the district if the improvements benefit real
5 property owned or leased by the district. Benefits to real property
6 owned or leased by the district include the design, construction,
7 or renovation of highways, roads, streets, sidewalks, crosswalks,
8 utilities, and drainage improvements that serve or benefit the real
9 property owned or leased by the district.

10 SECTION 2.02. Sections 44.031(a) and (f), Education Code,
11 are amended to read as follows:

12 (a) Except as provided by this subchapter, all school
13 district contracts for the purchase of goods and services, except
14 contracts for the purchase of produce or vehicle fuel, valued at
15 \$50,000 or more in the aggregate for each 12-month period shall be
16 made by the method, of the following methods, that provides the best
17 value for the district:

18 (1) competitive bidding for services other than
19 construction services;

20 (2) competitive sealed proposals for services other
21 than construction services;

22 (3) a request for proposals, for services other than
23 construction services;

24 (4) an interlocal contract for services other than
25 construction services;

26 (5) a method provided by Chapter 2267, Government
27 Code, for construction services [~~a design/build contract,~~

1 ~~[(6) a contract to construct, rehabilitate, alter, or~~
2 ~~repair facilities that involves using a construction manager,~~

3 ~~[(7) a job order contract for the minor construction,~~
4 ~~repair, rehabilitation, or alteration of a facility];~~

5 (6) ~~[(8)]~~ the reverse auction procedure as defined by
6 Section 2155.062(d), Government Code; or

7 (7) ~~[(9)]~~ the formation of a political subdivision
8 corporation under Section 304.001, Local Government Code.

9 (f) This section does not apply to a contract for
10 professional services rendered, including services of an
11 architect, attorney, engineer, or fiscal agent. A school district
12 may, at its option, contract for professional services rendered by
13 a financial consultant or a technology consultant in the manner
14 provided by Section 2254.003, Government Code, in lieu of the
15 methods provided by this section.

16 SECTION 2.03. Subchapter B, Chapter 44, Education Code, is
17 amended by adding Sections 44.0351 and 44.0352 to read as follows:

18 Sec. 44.0351. COMPETITIVE BIDDING. (a) Except to the
19 extent prohibited by other law and to the extent consistent with
20 this subchapter, a school district may use competitive bidding to
21 select a vendor as authorized by Section 44.031(a)(1).

22 (b) Except as provided by this subsection, Subchapter B,
23 Chapter 271, Local Government Code, does not apply to a competitive
24 bidding process under this subchapter. Sections 271.026,
25 271.027(a), and 271.0275, Local Government Code, apply to a
26 competitive bidding process under this subchapter.

27 (c) A school district shall award a competitively bid

1 contract at the bid amount to the bidder offering the best value for
2 the district. In determining the best value for the district, the
3 district is not restricted to considering price alone but may
4 consider any other factors stated in the selection criteria. The
5 selection criteria may include the factors listed in Section
6 44.031(b).

7 Sec. 44.0352. COMPETITIVE SEALED PROPOSALS. (a) In
8 selecting a vendor through competitive sealed proposals as
9 authorized by Section 44.031(a)(2), a school district shall follow
10 the procedures prescribed by this section.

11 (b) The district shall prepare a request for competitive
12 sealed proposals that includes information that vendors may require
13 to respond to the request. The district shall state in the request
14 for proposals the selection criteria that will be used in selecting
15 the successful offeror.

16 (c) The district shall receive, publicly open, and read
17 aloud the names of the offerors and, if any are required to be
18 stated, all prices stated in each proposal. Not later than the 45th
19 day after the date on which the proposals are opened, the district
20 shall evaluate and rank each proposal submitted in relation to the
21 published selection criteria.

22 (d) The district shall select the offeror that offers the
23 best value for the district based on the published selection
24 criteria and on its ranking evaluation. The district shall first
25 attempt to negotiate a contract with the selected offeror. The
26 district may discuss with the selected offeror options for a scope
27 or time modification and any price change associated with the

1 modification. If the district is unable to negotiate a
2 satisfactory contract with the selected offeror, the district
3 shall, formally and in writing, end negotiations with that offeror
4 and proceed to the next offeror in the order of the selection
5 ranking until a contract is reached or all proposals are rejected.

6 (e) In determining the best value for the district, the
7 district is not restricted to considering price alone but may
8 consider any other factors stated in the selection criteria.

9 SECTION 2.04. Subchapter B, Chapter 44, Education Code, is
10 amended by adding Section 44.0411 to read as follows:

11 Sec. 44.0411. CHANGE ORDERS. (a) If a change in plans or
12 specifications is necessary after the performance of a contract is
13 begun or if it is necessary to decrease or increase the quantity of
14 work to be performed or of materials, equipment, or supplies to be
15 furnished, the district may approve change orders making the
16 changes.

17 (b) The total contract price may not be increased because of
18 the changes unless additional money for increased costs is approved
19 for that purpose from available money or is provided for by the
20 authorization of the issuance of time warrants.

21 (c) The district may grant general authority to an
22 administrative official to approve the change orders.

23 (d) A contract with an original contract price of \$1 million
24 or more may not be increased under this section by more than 25
25 percent. If a change order for a contract with an original contract
26 price of less than \$1 million increases the contract amount to \$1
27 million or more, the total of the subsequent change orders may not

1 increase the revised contract amount by more than 25 percent of the
2 original contract price.

3 SECTION 2.05. Subchapter A, Chapter 46, Education Code, is
4 amended by adding Section 46.0111 to read as follows:

5 Sec. 46.0111. ACTIONS BROUGHT FOR DEFECTIVE DESIGN,
6 CONSTRUCTION, RENOVATION, OR IMPROVEMENT OF INSTRUCTIONAL
7 FACILITY. (a) In this section:

8 (1) "Net proceeds" means the difference between the
9 amount recovered by or on behalf of a school district in an action,
10 by settlement or otherwise, and the legal fees and litigation costs
11 incurred by the district in prosecuting the action.

12 (2) "State's share" means an amount equal to the
13 district's net proceeds from the recovery multiplied by a
14 percentage determined by dividing the amount of state assistance
15 under this subchapter used to pay the principal of and interest on
16 bonds issued in connection with the instructional facility that is
17 the subject of the action by the total amount of principal and
18 interest paid on the bonds as of the date of the judgment or
19 settlement.

20 (b) A school district that brings an action for recovery of
21 damages for the defective design, construction, renovation, or
22 improvement of an instructional facility financed by bonds
23 for which the district receives state assistance under this
24 subchapter shall provide the commissioner with written notice of
25 the action.

26 (c) The commissioner may join in the action on behalf of the
27 state to protect the state's share in the action.

1 (d) A school district shall use the net proceeds from an
2 action brought by the district for the defective design,
3 construction, renovation, or improvement of an instructional
4 facility financed by bonds for which the district receives state
5 assistance under this subchapter to repair the defective design,
6 construction, renovation, or improvement of the instructional
7 facility on which the action is brought or to replace the facility.
8 Section 46.008 applies to the repair.

9 (e) The state's share is state property. The school
10 district shall send to the comptroller any portion of the state's
11 share not used by the school district to repair the defective
12 design, construction, renovation, or improvement of the
13 instructional facility on which the action is brought or to replace
14 the facility. Section 42.258 applies to the state's share under
15 this subsection.

16 SECTION 2.06. Section 791.011, Government Code, is amended
17 by amending Subsection (h) and adding Subsection (i) to read as
18 follows:

19 (h) An interlocal contract or any other agreement between a
20 governmental entity and a purchasing cooperative may not be used to
21 purchase engineering or architectural services.

22 (i) An interlocal contract may not be used to purchase
23 construction services unless the services are in connection with
24 the construction of a specific facility to be jointly owned, used,
25 or financed by the parties to the contract or:

26 (1) the services are in connection with a job order
27 contract;

1 (2) the governing body of the governmental entity for
2 whom the work will ultimately be performed approves the purchase in
3 open session;

4 (3) public notice is provided in a manner consistent
5 with a direct contract for job order contracting services; and

6 (4) work orders under the contract comply with Section
7 2267.403.

8 SECTION 2.07. Section 2155.502(c), Government Code, is
9 amended to read as follows:

10 (c) The commission may not list a multiple award contract on
11 a schedule developed under Subsection (a) if the goods or services
12 provided by that contract:

13 (1) are available from only one vendor;

14 (2) are telecommunications services, facilities, or
15 equipment; ~~[or]~~

16 (3) are commodity items as defined by Section
17 2157.068(a); or

18 (4) are engineering services as described by Section
19 1001.003, Occupations Code, or architectural services as described
20 by Section 1051.001, Occupations Code.

21 SECTION 2.08. Section 2166.2525, Government Code, is
22 amended to read as follows:

23 Sec. 2166.2525. DETERMINATION OF CONTRACTING METHOD. The
24 ~~[commission shall adopt rules that determine the circumstances for~~
25 ~~use of each]~~ method of contracting allowed under this subchapter
26 for design and construction services is any method provided by
27 Chapter 2267. ~~[In developing the rules, the commission shall~~

1 ~~solicit advice and comment from design and construction~~
2 ~~professionals regarding the criteria the commission will use in~~
3 ~~determining which contracting method is best suited for a project.]~~

4 SECTION 2.09. Subtitle F, Title 10, Government Code, is
5 amended by adding Chapter 2267 to read as follows:

6 CHAPTER 2267. CONTRACTING AND DELIVERY PROCEDURES FOR
7 CONSTRUCTION PROJECTS

8 SUBCHAPTER A. GENERAL PROVISIONS

9 Sec. 2267.001. DEFINITIONS. In this chapter:

10 (1) "Architect" means an individual registered as an
11 architect under Chapter 1051, Occupations Code.

12 (2) "Engineer" means an individual licensed as an
13 engineer under Chapter 1001, Occupations Code.

14 (3) "Facility" means, unless otherwise specifically
15 provided, an improvement to real property.

16 (4) "General conditions" in the context of a contract
17 for the construction, rehabilitation, alteration, or repair of a
18 facility means on-site management, administrative personnel,
19 insurance, bonds, equipment, utilities, and incidental work,
20 including minor field labor and materials.

21 (5) "General contractor" means a sole proprietorship,
22 partnership, corporation, or other legal entity that assumes the
23 risk for constructing, rehabilitating, altering, or repairing all
24 or part of a facility at the contracted price.

25 (6) "Public work contract" means a contract for
26 constructing, altering, or repairing a public building or carrying
27 out or completing any public work.

1 Sec. 2267.002. APPLICABILITY OF CHAPTER TO GOVERNMENTAL
2 ENTITIES AND QUASI-GOVERNMENTAL ENTITIES ENGAGED IN PUBLIC WORKS.

3 This chapter applies to a public work contract made by a
4 governmental entity or quasi-governmental entity authorized by
5 state law to make a public work contract, including:

6 (1) a state agency as defined by Section 2151.002,
7 including the Texas Facilities Commission;

8 (2) a local government, including:

9 (A) a county;

10 (B) a municipality;

11 (C) a school district;

12 (D) any other special district or authority,
13 including a hospital district, a defense base development authority
14 established under Chapter 379B, Local Government Code, and a
15 conservation and reclamation district, including a river authority
16 or any other type of water district; and

17 (E) any other political subdivision of this
18 state;

19 (3) a public junior college as defined by Section
20 61.003, Education Code;

21 (4) any entity owned by a municipality;

22 (5) a board of trustees governed by Chapter 54,
23 Transportation Code; and

24 (6) any other entity that owns or operates a facility
25 for the benefit of a municipality or county.

26 Sec. 2267.003. CONFLICT OF LAWS; REQUIREMENT TO FOLLOW
27 PROCEDURES OF THIS CHAPTER. (a) Except as provided by this

1 section, this chapter prevails over any other law relating to a
2 public work contract.

3 (b) This chapter does not prevail over a conflicting
4 provision in a law relating to contracting with a historically
5 underutilized business.

6 (c) This chapter does not prevail over a conflicting
7 provision in an ordinance or resolution passed by the governing
8 body of a municipally owned electric utility in a procedure
9 described by Section 252.022(c), Local Government Code, that:

10 (1) requires the use of competitive bidding or
11 competitive sealed proposals; or

12 (2) prescribes a design-build procurement procedure
13 that conflicts with this chapter.

14 Sec. 2267.004. EXEMPTION: TEXAS DEPARTMENT OF
15 TRANSPORTATION; HIGHWAY PROJECTS. This chapter does not apply to:

16 (1) a contract entered into by the Texas Department of
17 Transportation; or

18 (2) a project that receives money from a state or
19 federal highway fund.

20 Sec. 2267.005. APPLICABILITY: INSTITUTIONS OF HIGHER
21 EDUCATION. (a) In this section, "institution of higher
22 education," "public junior college," and "university system" have
23 the meanings assigned by Section 61.003, Education Code.

24 (b) This chapter applies to a public junior college but does
25 not apply to:

26 (1) any other institution of higher education; or

27 (2) a university system.

1 Sec. 2267.006. EXEMPTION: REGIONAL TOLLWAY AUTHORITIES.

2 This chapter does not apply to a regional tollway authority under
3 Chapter 366, Transportation Code.

4 [Sections 2267.007-2267.050 reserved for expansion]

5 SUBCHAPTER B. GENERAL POWERS AND DUTIES

6 Sec. 2267.051. RULES. A governmental entity may adopt
7 rules as necessary to implement this chapter.

8 Sec. 2267.052. NOTICE REQUIREMENTS. (a) A governmental
9 entity shall advertise or publish notice of requests for bids,
10 proposals, or qualifications in a manner prescribed by law.

11 (b) For a contract entered into by a governmental entity
12 under a method provided by this chapter, the governmental entity
13 shall publish notice of the time and place the bid or proposal or
14 request for qualifications will be received and opened in a manner
15 prescribed by law.

16 (c) For a contract entered into by a municipality, river
17 authority, conservation and reclamation district created pursuant
18 to Section 59, Article XVI, Texas Constitution, and located in a
19 county with a population of more than 250,000, or defense base
20 development authority under any of the methods provided by this
21 chapter, the municipality, river authority, conservation and
22 reclamation district created pursuant to Section 59, Article XVI,
23 Texas Constitution, and located in a county with a population of
24 more than 250,000, or defense base development authority shall
25 publish notice of the time and place the bids or proposals, or the
26 responses to a request for qualifications, will be received and
27 opened. The notice must be published in a newspaper of general

1 circulation in the county in which the defense base development
2 authority's or municipality's central administrative office is
3 located or the county in which the greatest amount of the river
4 authority's or such conservation and reclamation district's
5 territory is located once each week for at least two weeks before
6 the deadline for receiving bids, proposals, or responses. If there
7 is not a newspaper of general circulation in that county, the notice
8 shall be published in a newspaper of general circulation in the
9 county nearest the county seat of the county in which the defense
10 base development authority's or municipality's central
11 administrative office is located or the county in which the
12 greatest amount of the river authority's or such conservation and
13 reclamation district's territory is located. In a two-step
14 procurement process, the time and place the second step bids,
15 proposals, or responses will be received are not required to be
16 published separately.

17 (d) For a contract entered into by a county under any of the
18 methods provided by this chapter, the county shall publish notice
19 of the time and place the bids or proposals, or the responses to a
20 request for qualifications, will be received and opened. The
21 notice must be published in a newspaper of general circulation in
22 the county once each week for at least two weeks before the deadline
23 for receiving bids, proposals, or responses. If there is not a
24 newspaper of general circulation in the county, the notice shall
25 be:

- 26 (1) posted at the courthouse door of the county; and
27 (2) published in a newspaper of general circulation in

1 the nearest county.

2 Sec. 2267.053. DELEGATION OF AUTHORITY. (a) The governing
3 body of a governmental entity may delegate its authority under this
4 chapter regarding an action authorized or required by this chapter
5 to a designated representative, committee, or other person.

6 (b) The governmental entity shall provide notice of the
7 delegation, the limits of the delegation, and the name or title of
8 each person designated under Subsection (a) by rule or in the
9 request for bids, proposals, or qualifications or in an addendum to
10 the request.

11 Sec. 2267.054. RIGHT TO WORK. (a) This section applies to
12 a governmental entity when the governmental entity is engaged in:

- 13 (1) procuring goods or services under this chapter;
14 (2) awarding a contract under this chapter; or
15 (3) overseeing procurement or construction for a
16 public work or public improvement under this chapter.

17 (b) In engaging in an activity to which this section
18 applies, a governmental entity:

- 19 (1) may not consider whether a person is a member of or
20 has another relationship with any organization; and
21 (2) shall ensure that its bid specifications and any
22 subsequent contract or other agreement do not deny or diminish the
23 right of a person to work because of the person's membership or
24 other relationship status with respect to an organization.

25 Sec. 2267.055. CRITERIA TO CONSIDER. (a) In determining
26 the award of a contract under this chapter, the governmental entity
27 may consider:

- 1 (1) the price;
- 2 (2) the offeror's experience and reputation;
- 3 (3) the quality of the offeror's goods or services;
- 4 (4) the impact on the ability of the governmental
5 entity to comply with rules relating to historically underutilized
6 businesses;
- 7 (5) the offeror's safety record;
- 8 (6) the offeror's proposed personnel;
- 9 (7) whether the offeror's financial capability is
10 appropriate to the size and scope of the project; and
- 11 (8) any other relevant factor specifically listed in
12 the request for bids, proposals, or qualifications.

13 (b) In determining the award of a contract under this
14 chapter, the governmental entity shall:

15 (1) consider and apply any existing laws, including
16 any criteria, related to historically underutilized businesses;
17 and

18 (2) consider and apply any existing laws, rules, or
19 applicable municipal charters, including laws applicable to local
20 governments, related to the use of women, minority, small, or
21 disadvantaged businesses.

22 Sec. 2267.056. USING METHOD OTHER THAN COMPETITIVE BIDDING
23 FOR CONSTRUCTION SERVICES; EVALUATION OF PROPOSALS; CRITERIA.

24 (a) The governing body of a governmental entity that considers a
25 construction contract using a method authorized by this chapter
26 other than competitive bidding must, before advertising, determine
27 which method provides the best value for the governmental entity.

1 (b) The governmental entity shall base its selection among
2 offerors on applicable criteria listed for the particular method
3 used. The governmental entity shall publish in the request for
4 proposals or qualifications the criteria that will be used to
5 evaluate the offerors, and the applicable weighted value for each
6 criterion.

7 (c) The governmental entity shall document the basis of its
8 selection and shall make the evaluations public not later than the
9 seventh day after the date the contract is awarded.

10 Sec. 2267.057. ARCHITECT OR ENGINEER SERVICES. (a) An
11 architect or engineer required to be selected or designated under
12 this chapter has full responsibility for complying with Chapter
13 1051 or 1001, Occupations Code, as applicable.

14 (b) If the selected or designated architect or engineer is
15 not a full-time employee of the governmental entity, the
16 governmental entity shall select the architect or engineer on the
17 basis of demonstrated competence and qualifications as provided by
18 Section 2254.004.

19 Sec. 2267.058. USE OF OTHER PROFESSIONAL SERVICES.
20 (a) Independently of the contractor, construction
21 manager-at-risk, or design-build firm, the governmental entity
22 shall provide or contract for the construction materials
23 engineering, testing, and inspection services and the verification
24 testing services necessary for acceptance of the facility by the
25 governmental entity.

26 (b) The governmental entity shall select the services for
27 which it contracts under this section in accordance with Section

1 2254.004.

2 Sec. 2267.059. SEALED BIDS, PROPOSALS, OR QUALIFICATIONS
3 REQUIRED. A person who submits a bid, proposal, or qualification to
4 a governmental entity shall seal it before delivery.

5 [Sections 2267.060-2267.100 reserved for expansion]

6 SUBCHAPTER C. COMPETITIVE BIDDING METHOD

7 Sec. 2267.101. CONTRACTS FOR FACILITIES: COMPETITIVE
8 BIDDING. (a) In this chapter, "competitive bidding" is a
9 procurement method by which a governmental entity contracts with a
10 contractor for the construction, alteration, rehabilitation, or
11 repair of a facility by awarding the contract to the lowest
12 responsible bidder.

13 (b) Except as otherwise provided by this chapter or other
14 law, a governmental entity may contract for the construction,
15 alteration, rehabilitation, or repair of a facility only after the
16 entity advertises for bids for the contract in a manner prescribed
17 by law, receives competitive bids, and awards the contract to the
18 lowest responsible bidder.

19 Sec. 2267.102. USE OF ARCHITECT OR ENGINEER. The
20 governmental entity shall select or designate an architect or
21 engineer in accordance with Chapter 1051 or 1001, Occupations Code,
22 as applicable, to prepare the construction documents required for a
23 project to be awarded by competitive bidding.

24 Sec. 2267.103. PREPARATION OF REQUEST. The governmental
25 entity shall prepare a request for competitive bids that includes
26 construction documents, estimated budget, project scope, estimated
27 project completion date, and other information that a contractor

1 may require to submit a bid.

2 Sec. 2267.104. EVALUATION OF OFFERORS. The governmental
3 entity shall receive, publicly open, and read aloud the names of the
4 offerors and their bids.

5 Sec. 2267.105. SELECTION OF OFFEROR. Not later than the
6 seventh day after the date the contract is awarded, the
7 governmental entity shall document the basis of its selection and
8 shall make the evaluations public.

9 Sec. 2267.106. APPLICABILITY OF OTHER COMPETITIVE BIDDING
10 LAW TO CERTAIN LOCAL GOVERNMENTAL ENTITIES. Except as otherwise
11 specifically provided by this section, Subchapter B, Chapter 271,
12 Local Government Code, does not apply to a competitive bidding
13 process conducted under this chapter. Sections 271.026,
14 271.027(a), and 271.0275, Local Government Code, apply to a
15 competitive bidding process conducted under this chapter by a
16 governmental entity as defined by Section 271.021, Local Government
17 Code.

18 [Sections 2267.107-2267.150 reserved for expansion]

19 SUBCHAPTER D. COMPETITIVE SEALED PROPOSAL METHOD

20 Sec. 2267.151. CONTRACTS FOR FACILITIES: COMPETITIVE
21 SEALED PROPOSALS. (a) In this chapter, "competitive sealed
22 proposals" is a procurement method by which a governmental entity
23 requests proposals, ranks the offerors, negotiates as prescribed,
24 and then contracts with a general contractor for the construction,
25 rehabilitation, alteration, or repair of a facility.

26 (b) In selecting a contractor through competitive sealed
27 proposals, a governmental entity shall follow the procedures

1 provided by this subchapter.

2 Sec. 2267.152. USE OF ARCHITECT OR ENGINEER. The
3 governmental entity shall select or designate an architect or
4 engineer to prepare construction documents for the project.

5 Sec. 2267.153. PREPARATION OF REQUEST. The governmental
6 entity shall prepare a request for competitive sealed proposals
7 that includes construction documents, selection criteria and the
8 weighted value for each criterion, estimated budget, project scope,
9 estimated project completion date, and other information that a
10 contractor may require to respond to the request.

11 Sec. 2267.154. EVALUATION OF OFFERORS. (a) The
12 governmental entity shall receive, publicly open, and read aloud
13 the names of the offerors and any monetary proposals made by the
14 offerors.

15 (b) Not later than the 45th day after the date on which the
16 proposals are opened, the governmental entity shall evaluate and
17 rank each proposal submitted in relation to the published selection
18 criteria.

19 Sec. 2267.155. SELECTION OF OFFEROR. (a) The governmental
20 entity shall select the offeror that submits the proposal that
21 offers the best value for the governmental entity based on:

22 (1) the selection criteria in the request for proposal
23 and the weighted value for those criteria in the request for
24 proposal; and

25 (2) its ranking evaluation.

26 (b) The governmental entity shall first attempt to
27 negotiate a contract with the selected offeror. The governmental

1 entity and its architect or engineer may discuss with the selected
2 offeror options for a scope or time modification and any price
3 change associated with the modification.

4 (c) If the governmental entity is unable to negotiate a
5 satisfactory contract with the selected offeror, the governmental
6 entity shall, formally and in writing, end negotiations with that
7 offeror and proceed to the next offeror in the order of the
8 selection ranking until a contract is reached or all proposals are
9 rejected.

10 [Sections 2267.156-2267.200 reserved for expansion]

11 SUBCHAPTER E. CONSTRUCTION MANAGER-AGENT METHOD

12 Sec. 2267.201. CONTRACTS FOR FACILITIES: CONSTRUCTION
13 MANAGER-AGENT. (a) In this chapter, the "construction
14 manager-agent method" is a delivery method by which a governmental
15 entity contracts with a construction manager-agent to provide
16 consultation or administrative services during the design and
17 construction phase and to manage multiple contracts with various
18 construction prime contractors.

19 (b) A construction manager-agent is a sole proprietorship,
20 partnership, corporation, or other legal entity that serves as the
21 agent for the governmental entity by providing construction
22 administration and management services described by Subsection (a)
23 for the construction, rehabilitation, alteration, or repair of a
24 facility.

25 (c) A governmental entity may retain a construction
26 manager-agent for assistance in the construction, rehabilitation,
27 alteration, or repair of a facility only as provided by this

1 subchapter.

2 Sec. 2267.202. CONTRACT PROVISIONS OF CONSTRUCTION
3 MANAGER-AGENT. The contract between the governmental entity and
4 the construction manager-agent may require the construction
5 manager-agent to provide:

6 (1) administrative personnel;

7 (2) equipment necessary to perform duties under this
8 subchapter;

9 (3) on-site management; and

10 (4) other services specified in the contract.

11 Sec. 2267.203. LIMITS ON CONSTRUCTION MANAGER-AGENT. A
12 construction manager-agent may not:

13 (1) self-perform any aspect of the construction,
14 rehabilitation, alteration, or repair of the facility;

15 (2) be a party to a construction subcontract for the
16 construction, rehabilitation, alteration, or repair of the
17 facility; or

18 (3) provide or be required to provide performance and
19 payment bonds for the construction, rehabilitation, alteration, or
20 repair of the facility.

21 Sec. 2267.204. FIDUCIARY CAPACITY OF CONSTRUCTION
22 MANAGER-AGENT. A construction manager-agent represents the
23 governmental entity in a fiduciary capacity.

24 Sec. 2267.205. USE OF ARCHITECT OR ENGINEER. (a) On or
25 before the selection of a construction manager-agent, the
26 governmental entity shall select or designate an architect or
27 engineer in accordance with Chapter 1051 or 1001, Occupations Code,

1 as applicable, to prepare the construction documents for the
2 project.

3 (b) The governmental entity's architect or engineer may not
4 serve, alone or in combination with another person, as the
5 construction manager-agent unless the architect or engineer is
6 hired to serve as the construction manager-agent under a separate
7 or concurrent selection process conducted in accordance with this
8 subchapter. This subsection does not prohibit the governmental
9 entity's architect or engineer from providing customary
10 construction phase services under the architect's or engineer's
11 original professional service agreement in accordance with
12 applicable licensing laws.

13 (c) To the extent that the construction manager-agent's
14 services are defined as part of the practice of architecture or
15 engineering under Chapter 1051 or 1001, Occupations Code, those
16 services must be conducted by a person licensed under the
17 applicable chapter.

18 Sec. 2267.206. SELECTION OF CONTRACTORS. A governmental
19 entity using the construction manager-agent method shall procure,
20 in accordance with applicable law and in any manner authorized by
21 this chapter, a general contractor or trade contractors who will
22 serve as the prime contractor for their specific portion of the work
23 and provide performance and payment bonds to the governmental
24 entity in accordance with applicable laws.

25 Sec. 2267.207. SELECTION OF CONSTRUCTION MANAGER-AGENT. A
26 governmental entity shall select a construction manager-agent on
27 the basis of demonstrated competence and qualifications in the same

1 manner that an architect or engineer is selected under Section
2 2254.004.

3 Sec. 2267.208. INSURANCE. A construction manager-agent
4 selected under this subchapter shall maintain professional
5 liability or errors and omissions insurance in the amount of at
6 least \$1 million for each occurrence.

7 [Sections 2267.209-2267.250 reserved for expansion]

8 SUBCHAPTER F. CONSTRUCTION MANAGER-AT-RISK METHOD

9 Sec. 2267.251. CONTRACTS FOR FACILITIES: CONSTRUCTION
10 MANAGER-AT-RISK. (a) In this chapter, the "construction
11 manager-at-risk method" is a delivery method by which a
12 governmental entity contracts with an architect or engineer for
13 design and construction phase services and contracts separately
14 with a construction manager-at-risk to serve as the general
15 contractor and to provide consultation during the design and
16 construction, rehabilitation, alteration, or repair of a facility.

17 (b) A construction manager-at-risk is a sole
18 proprietorship, partnership, corporation, or other legal entity
19 that assumes the risk for construction, rehabilitation,
20 alteration, or repair of a facility at the contracted price as a
21 general contractor and provides consultation to the governmental
22 entity regarding construction during and after the design of the
23 facility. The contracted price may be a guaranteed maximum price.

24 (c) A governmental entity may use the construction
25 manager-at-risk method in selecting a general contractor for the
26 construction, rehabilitation, alteration, or repair of a facility
27 only as provided by this subchapter.

1 Sec. 2267.252. USE OF ARCHITECT OR ENGINEER. (a) On or
2 before the selection of a construction manager-at-risk, the
3 governmental entity shall select or designate an architect or
4 engineer to prepare the construction documents for the project.

5 (b) The governmental entity's architect or engineer for a
6 project may not serve, alone or in combination with another person,
7 as the construction manager-at-risk unless the architect or
8 engineer is hired to serve as the construction manager-at-risk
9 under a separate or concurrent selection process conducted in
10 accordance with this subchapter. This subsection does not prohibit
11 the governmental entity's architect or engineer from providing
12 customary construction phase services under the architect's or
13 engineer's original professional service agreement in accordance
14 with applicable licensing laws.

15 Sec. 2267.253. SELECTION PROCESS. (a) The governmental
16 entity shall select the construction manager-at-risk in a one-step
17 or two-step process.

18 (b) The governmental entity shall prepare a single request
19 for proposals, in the case of a one-step process, and an initial
20 request for qualifications, in the case of a two-step process, that
21 includes:

22 (1) a statement as to whether the selection process is
23 a one-step or two-step process;

24 (2) general information on the project site, project
25 scope, schedule, selection criteria and the weighted value for each
26 criterion, and estimated budget and the time and place for receipt
27 of the proposals or qualifications; and

1 (3) other information that may assist the governmental
2 entity in its selection of a construction manager-at-risk.

3 (c) The governmental entity shall state the selection
4 criteria in the request for proposals or qualifications.

5 (d) If a one-step process is used, the governmental entity
6 may request, as part of the offeror's proposal, proposed fees and
7 prices for fulfilling the general conditions.

8 (e) If a two-step process is used, the governmental entity
9 may not request fees or prices in step one. In step two, the
10 governmental entity may request that five or fewer offerors,
11 selected solely on the basis of qualifications, provide additional
12 information, including the construction manager-at-risk's proposed
13 fee and prices for fulfilling the general conditions.

14 (f) At each step, the governmental entity shall receive,
15 publicly open, and read aloud the names of the offerors. At the
16 appropriate step, the governmental entity shall also read aloud the
17 fees and prices, if any, stated in each proposal as the proposal is
18 opened.

19 (g) Not later than the 45th day after the date on which the
20 final proposals are opened, the governmental entity shall evaluate
21 and rank each proposal submitted in relation to the criteria set
22 forth in the request for proposals.

23 Sec. 2267.254. SELECTION OF OFFEROR. (a) The governmental
24 entity shall select the offeror that submits the proposal that
25 offers the best value for the governmental entity based on the
26 published selection criteria and on its ranking evaluation.

27 (b) The governmental entity shall first attempt to

1 negotiate a contract with the selected offeror.

2 (c) If the governmental entity is unable to negotiate a
3 satisfactory contract with the selected offeror, the governmental
4 entity shall, formally and in writing, end negotiations with that
5 offeror and proceed to negotiate with the next offeror in the order
6 of the selection ranking until a contract is reached or
7 negotiations with all ranked offerors end.

8 (d) Not later than the seventh day after the date the
9 contract is awarded, the governmental entity shall make the
10 rankings determined under Section 2267.253(g) public.

11 Sec. 2267.255. PERFORMANCE OF WORK. (a) A construction
12 manager-at-risk shall publicly advertise for bids or proposals and
13 receive bids or proposals from trade contractors or subcontractors
14 for the performance of all major elements of the work other than the
15 minor work that may be included in the general conditions.

16 (b) A construction manager-at-risk may seek to perform
17 portions of the work itself if:

18 (1) the construction manager-at-risk submits its bid
19 or proposal for those portions of the work in the same manner as all
20 other trade contractors or subcontractors; and

21 (2) the governmental entity determines that the
22 construction manager-at-risk's bid or proposal provides the best
23 value for the governmental entity.

24 Sec. 2267.256. REVIEW OF BIDS OR PROPOSALS. (a) The
25 construction manager-at-risk shall review all trade contractor or
26 subcontractor bids or proposals in a manner that does not disclose
27 the contents of the bid or proposal during the selection process to

1 a person not employed by the construction manager-at-risk,
2 architect, engineer, or governmental entity. All bids or proposals
3 shall be made available to the governmental entity on request and to
4 the public after the later of the award of the contract or the
5 seventh day after the date of final selection of bids or proposals.

6 (b) If the construction manager-at-risk reviews, evaluates,
7 and recommends to the governmental entity a bid or proposal from a
8 trade contractor or subcontractor but the governmental entity
9 requires another bid or proposal to be accepted, the governmental
10 entity shall compensate the construction manager-at-risk by a
11 change in price, time, or guaranteed maximum cost for any
12 additional cost and risk that the construction manager-at-risk
13 incurs because of the governmental entity's requirement that
14 another bid or proposal be accepted.

15 Sec. 2267.257. DEFAULT; PERFORMANCE OF WORK. If a selected
16 trade contractor or subcontractor defaults in the performance of
17 its work or fails to execute a subcontract after being selected in
18 accordance with this subchapter, the construction manager-at-risk
19 may itself fulfill, without advertising, the contract requirements
20 or select a replacement trade contractor or subcontractor to
21 fulfill the contract requirements.

22 Sec. 2267.258. PERFORMANCE OR PAYMENT BOND. (a) If a
23 fixed contract amount or guaranteed maximum price has not been
24 determined at the time the contract is awarded, the penal sums of
25 the performance and payment bonds delivered to the governmental
26 entity must each be in an amount equal to the construction budget,
27 as specified in the request for proposals or qualifications.

1 (b) The construction manager-at-risk shall deliver the
2 bonds not later than the 10th day after the date the construction
3 manager-at-risk executes the contract unless the construction
4 manager-at-risk furnishes a bid bond or other financial security
5 acceptable to the governmental entity to ensure that the
6 construction manager will furnish the required performance and
7 payment bonds when a guaranteed maximum price is established.

8 [Sections 2267.259-2267.300 reserved for expansion]

9 SUBCHAPTER G. BUILDING USING DESIGN-BUILD METHOD

10 Sec. 2267.301. CONTRACTS FOR FACILITIES: DESIGN-BUILD. In
11 this chapter, "design-build" is a project delivery method by which
12 a governmental entity contracts with a single entity to provide
13 both design and construction services for the construction,
14 rehabilitation, alteration, or repair of a facility.

15 Sec. 2267.302. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;
16 EXCEPTIONS. This subchapter applies only to a facility that is a
17 building or an associated structure, including an electric utility
18 structure. This subchapter does not apply to:

19 (1) a highway, road, street, bridge, underground
20 utility, water supply project, water plant, wastewater plant, water
21 and wastewater distribution or conveyance facility, wharf, dock,
22 airport runway or taxiway, drainage project, or related type of
23 project associated with civil engineering construction; or

24 (2) a building or structure that is incidental to a
25 project that is primarily a civil engineering construction project.

26 Sec. 2267.303. CONTRACTS FOR BUILDINGS: DESIGN-BUILD. A
27 governmental entity may use the design-build method for the

1 construction, rehabilitation, alteration, or repair of a building
2 or associated structure only as provided by this subchapter. In
3 using that method, the governmental entity shall enter into a
4 single contract with a design-build firm for the design and
5 construction of the building or associated structure.

6 Sec. 2267.304. DESIGN-BUILD FIRMS. A design-build firm
7 under this subchapter must be a sole proprietorship, partnership,
8 corporation, or other legal entity or team that includes an
9 architect or engineer and a construction contractor.

10 Sec. 2267.305. USE OF ARCHITECT OR ENGINEER AS INDEPENDENT
11 REPRESENTATIVE. The governmental entity shall select or designate
12 an architect or engineer independent of the design-build firm to
13 act as the governmental entity's representative for the duration of
14 the project.

15 Sec. 2267.306. PREPARATION OF REQUEST. (a) The
16 governmental entity shall prepare a request for qualifications that
17 includes general information on the project site, project scope,
18 budget, special systems, selection criteria and the weighted value
19 for each criterion, and other information that may assist potential
20 design-build firms in submitting proposals for the project.

21 (b) The governmental entity shall also prepare the design
22 criteria package that includes more detailed information on the
23 project. If the preparation of the design criteria package
24 requires architectural or engineering services that constitute the
25 practice of architecture within the meaning of Chapter 1051,
26 Occupations Code, or the practice of engineering within the meaning
27 of Chapter 1001, Occupations Code, those services shall be provided

1 in accordance with the applicable law.

2 (c) The design criteria package must include a set of
3 documents that provides sufficient information, including criteria
4 for selection, to permit a design-build firm to prepare a response
5 to the governmental entity's request for qualifications and to
6 provide any additional information requested. The design criteria
7 package must specify criteria the governmental entity considers
8 necessary to describe the project and may include, as appropriate,
9 the legal description of the site, survey information concerning
10 the site, interior space requirements, special material
11 requirements, material quality standards, conceptual criteria for
12 the project, special equipment requirements, cost or budget
13 estimates, time schedules, quality assurance and quality control
14 requirements, site development requirements, applicable codes and
15 ordinances, provisions for utilities, parking requirements, and
16 any other requirement.

17 (d) The governmental entity may not require offerors to
18 submit detailed architectural or engineering designs as part of a
19 proposal or a response to a request for qualifications.

20 Sec. 2267.307. EVALUATION OF DESIGN-BUILD FIRMS. (a) For
21 each design-build firm that responded to the request for
22 qualifications, the governmental entity shall evaluate the firm's
23 experience, technical competence, and capability to perform, the
24 past performance of the firm and members of the firm, and other
25 appropriate factors submitted by the firm in response to the
26 request for qualifications, except that cost-related or
27 price-related evaluation factors are not permitted.

1 (b) Each firm must certify to the governmental entity that
2 each architect or engineer that is a member of the firm was selected
3 based on demonstrated competence and qualifications, in the manner
4 provided by Section 2254.004.

5 (c) The governmental entity shall qualify a maximum of five
6 responders to submit proposals that contain additional information
7 and, if the governmental entity chooses, to interview for final
8 selection.

9 (d) The governmental entity shall evaluate the additional
10 information submitted by the offerors on the basis of the selection
11 criteria stated in the request for qualifications and the results
12 of any interview.

13 (e) The governmental entity may request additional
14 information regarding demonstrated competence and qualifications,
15 considerations of the safety and long-term durability of the
16 project, the feasibility of implementing the project as proposed,
17 the ability of the offeror to meet schedules, or costing
18 methodology. As used in this subsection, "costing methodology"
19 means an offeror's policies on subcontractor markup, definition of
20 general conditions, range of cost for general conditions, policies
21 on retainage, policies on contingencies, discount for prompt
22 payment, and expected staffing for administrative duties. The term
23 does not include a guaranteed maximum price or bid for overall
24 design or construction.

25 (f) The governmental entity shall rank each proposal
26 submitted on the basis of the criteria set forth in the request for
27 qualifications.

1 Sec. 2267.308. SELECTION OF DESIGN-BUILD FIRM. (a) The
2 governmental entity shall select the design-build firm that submits
3 the proposal offering the best value for the governmental entity on
4 the basis of the published selection criteria and on its ranking
5 evaluations.

6 (b) The governmental entity shall first attempt to
7 negotiate a contract with the selected firm.

8 (c) If the governmental entity is unable to negotiate a
9 satisfactory contract with the selected firm, the governmental
10 entity shall, formally and in writing, end all negotiations with
11 that firm and proceed to negotiate with the next firm in the order
12 of the selection ranking until a contract is reached or
13 negotiations with all ranked firms end.

14 (d) Not later than the seventh day after the date the
15 contract is awarded, the governmental entity shall make the
16 rankings determined under Section 2267.307(f) public.

17 Sec. 2267.309. SUBMISSION OF DESIGN AFTER SELECTION. After
18 selection of the design-build firm, that firm's architects or
19 engineers shall submit all design elements for review and
20 determination of scope compliance to the governmental entity or the
21 governmental entity's architect or engineer before or concurrently
22 with construction.

23 Sec. 2267.310. FINAL CONSTRUCTION DOCUMENTS. The
24 design-build firm shall supply a set of construction documents for
25 the completed project to the governmental entity at the conclusion
26 of construction. The documents must note any changes made during
27 construction.

1 Sec. 2267.311. PERFORMANCE OR PAYMENT BOND. (a) A payment
2 or performance bond is not required and may not provide coverage for
3 the design portion of the design-build contract with the
4 design-build firm under this subchapter.

5 (b) If a fixed contract amount or guaranteed maximum price
6 has not been determined at the time the design-build contract is
7 awarded, the penal sums of the performance and payment bonds
8 delivered to the governmental entity must each be in an amount equal
9 to the construction budget, as specified in the design criteria
10 package.

11 (c) The design-build firm shall deliver the bonds not later
12 than the 10th day after the date the design-build firm executes the
13 contract unless the design-build firm furnishes a bid bond or other
14 financial security acceptable to the governmental entity to ensure
15 that the design-build firm will furnish the required performance
16 and payment bonds before construction begins.

17 [Sections 2267.312-2267.350 reserved for expansion]

18 SUBCHAPTER H. DESIGN-BUILD PROCEDURES FOR CERTAIN CIVIL WORKS

19 PROJECTS

20 Sec. 2267.351. DEFINITIONS. In this subchapter:

21 (1) "Civil works project" means:

22 (A) roads, streets, bridges, utilities, water
23 supply projects, water plants, wastewater plants, water
24 distribution and wastewater conveyance facilities, desalination
25 projects, wharves, docks, airport runways and taxiways, storm
26 drainage and flood control projects, or transit projects;

27 (B) types of projects or facilities related to

1 those described by Paragraph (A) and associated with civil
2 engineering construction; and

3 (C) buildings or structures that are incidental
4 to projects or facilities that are described by Paragraphs (A) and
5 (B) and that are primarily civil engineering construction projects.

6 (2) "Design-build firm" means a partnership,
7 corporation, or other legal entity or team that includes an
8 engineer and a construction contractor qualified to engage in civil
9 works construction in Texas.

10 (3) "Design criteria package" means a set of documents
11 that:

12 (A) provides sufficient information to convey
13 the intent, goals, criteria, and objectives of the civil works
14 project; and

15 (B) permits a design-build firm to:

16 (i) assess the scope of work and the risk
17 involved; and

18 (ii) submit a proposal on the project.

19 Sec. 2267.352. APPLICABILITY. This subchapter applies to a
20 governmental entity that:

21 (1) has a population of more than 100,000 within the
22 entity's geographic boundary or service area; or

23 (2) is a board of trustees governed by Chapter 54,
24 Transportation Code.

25 Sec. 2267.353. CONTRACTS FOR CIVIL WORKS PROJECTS:

26 DESIGN-BUILD. (a) A governmental entity may use the design-build
27 method for the construction, rehabilitation, alteration, or repair

1 of a civil works project. In using this method and in entering into
2 a contract for the services of a design-build firm, the contracting
3 governmental entity and the design-build firm shall follow the
4 procedures provided by this subchapter.

5 (b) A contract for a project under this subchapter may cover
6 only a single integrated project. A governmental entity may not
7 enter into a contract for aggregated projects at multiple
8 locations. For purposes of this subsection:

9 (1) if a metropolitan transit authority created under
10 Chapter 451, Transportation Code, enters into a contract for a
11 project involving a bus rapid transit system created under Chapter
12 451, Transportation Code, the bus rapid transit system is a single
13 integrated project; and

14 (2) a water treatment plant, including a desalination
15 plant, that includes treatment facilities, well fields, and
16 pipelines is a single integrated project.

17 (c) A governmental entity shall use the following criteria
18 as a minimum basis for determining the circumstances under which
19 the design-build method is appropriate for a project:

20 (1) the extent to which the entity can adequately
21 define the project requirements;

22 (2) the time constraints for the delivery of the
23 project;

24 (3) the ability to ensure that a competitive
25 procurement can be held; and

26 (4) the capability of the entity to manage and oversee
27 the project, including the availability of experienced personnel or

1 outside consultants who are familiar with the design-build method
2 of project delivery.

3 (d) A governmental entity shall make a formal finding on the
4 criteria described by Subsection (c) before preparing a request for
5 qualifications under Section 2267.357.

6 Sec. 2267.354. LIMITATION ON NUMBER OF PROJECTS. (a)
7 Before September 1, 2013:

8 (1) a governmental entity with a population of 500,000
9 or more within the entity's geographic boundary or service area
10 may, under this subchapter, enter into contracts for not more than
11 three projects in any fiscal year; and

12 (2) a municipally owned water utility with a separate
13 governing board appointed by the governing body of a municipality
14 with a population of 500,000 or more may:

15 (A) independently enter into a contract for not
16 more than one civil works project in any fiscal year; and

17 (B) enter into contracts for additional civil
18 works projects in any fiscal year, but not more than the number of
19 civil works projects prescribed by the limit in Subdivision (1) for
20 the municipality, provided that:

21 (i) the additional contracts for the civil
22 works projects entered into by the utility under this paragraph are
23 allocated to the number of contracts the municipality that appoints
24 the utility's governing board may enter under Subdivision (1); and

25 (ii) the governing body of the municipality
26 must approve the contracts.

27 (b) Before September 1, 2015, a governmental entity that has

1 a population of 100,000 or more but less than 500,000 or is a board
2 of trustees governed by Chapter 54, Transportation Code, may enter
3 into contracts under this subchapter for not more than two projects
4 in any fiscal year.

5 (c) After the period described by Subsection (a) or (b):

6 (1) a governmental entity with a population of 500,000
7 or more within the entity's geographic boundary or service area
8 may, under this subchapter, enter into contracts for not more than
9 six projects in any fiscal year;

10 (2) a municipally owned water utility with a separate
11 governing board appointed by the governing body of a municipality
12 with a population of 500,000 or more may:

13 (A) independently enter into contracts for not
14 more than two civil works projects in any fiscal year; and

15 (B) enter into contracts for additional civil
16 works projects in any fiscal year, but not more than the number of
17 civil works projects prescribed by the limit in Subdivision (1) for
18 the municipality, provided that:

19 (i) the additional contracts for the civil
20 works projects entered into by the utility under this paragraph are
21 allocated to the number of contracts the municipality that appoints
22 the utility's governing board may enter under Subdivision (1); and

23 (ii) the governing body of the municipality
24 must approve the contracts; and

25 (3) a governmental entity that has a population of
26 100,000 or more but less than 500,000 or is a board of trustees
27 governed by Chapter 54, Transportation Code, may enter into

1 contracts under this subchapter for not more than four projects in
2 any fiscal year.

3 (d) For purposes of determining the number of eligible
4 projects under this section, a municipally owned water utility with
5 a separate governing board appointed by the governing body of the
6 municipality is considered part of the municipality.

7 Sec. 2267.355. USE OF ENGINEER. (a) The governmental
8 entity shall select or designate an engineer who is independent of
9 the design-build firm to act as its representative for the
10 procurement process and for the duration of the work on the civil
11 works project. The selected or designated engineer has full
12 responsibility for complying with Chapter 1001, Occupations Code.

13 (b) If the engineer is not a full-time employee of the
14 governmental entity, the governmental entity shall select the
15 engineer on the basis of demonstrated competence and qualifications
16 as provided by Section 2254.004.

17 Sec. 2267.356. USE OF OTHER PROFESSIONAL SERVICES.

18 (a) The governmental entity shall provide or contract for,
19 independently of the design-build firm, the following services as
20 necessary for the acceptance of the civil works project by the
21 entity:

22 (1) inspection services;

23 (2) construction materials engineering and testing;

24 and

25 (3) verification testing services.

26 (b) The governmental entity shall select the services for
27 which it contracts under this section in accordance with Section

1 2254.004.

2 Sec. 2267.357. REQUEST FOR QUALIFICATIONS. (a) The
3 governmental entity shall prepare a request for qualifications that
4 includes:

- 5 (1) information on the civil works project site;
- 6 (2) project scope;
- 7 (3) project budget;
- 8 (4) project schedule;
- 9 (5) criteria for selection under Section 2267.359 and
10 the weighting of the criteria; and

11 (6) other information that may assist potential
12 design-build firms in submitting proposals for the project.

13 (b) The governmental entity shall also prepare a design
14 criteria package as described by Section 2267.358.

15 Sec. 2267.358. CONTENTS OF DESIGN CRITERIA PACKAGE. A
16 design criteria package may include, as appropriate:

- 17 (1) budget or cost estimates;
- 18 (2) information on the site;
- 19 (3) performance criteria;
- 20 (4) special material requirements;
- 21 (5) initial design calculations;
- 22 (6) known utilities;
- 23 (7) capacity requirements;
- 24 (8) quality assurance and quality control
25 requirements;
- 26 (9) the type, size, and location of structures; and
- 27 (10) notice of any ordinances, rules, or goals adopted

1 by the governmental entity relating to awarding contracts to
2 historically underutilized businesses.

3 Sec. 2267.359. EVALUATION OF DESIGN-BUILD FIRMS. (a) The
4 governmental entity shall receive proposals and shall evaluate each
5 offeror's experience, technical competence, and capability to
6 perform, the past performance of the offeror's team and members of
7 the team, and other appropriate factors submitted by the team or
8 firm in response to the request for qualifications, except that
9 cost-related or price-related evaluation factors are not permitted
10 at this stage.

11 (b) Each offeror must:

12 (1) select or designate each engineer that is a member
13 of its team based on demonstrated competence and qualifications, in
14 the manner provided by Section 2254.004; and

15 (2) certify to the governmental entity that each
16 selection or designation was based on demonstrated competence and
17 qualifications, in the manner provided by Section 2254.004.

18 (c) The governmental entity shall qualify offerors to
19 submit additional information and, if the entity chooses, to
20 interview for final selection.

21 Sec. 2267.360. SELECTION OF DESIGN-BUILD FIRM. The
22 governmental entity shall select a design-build firm using a
23 combination of technical and cost proposals as provided by Section
24 2267.361.

25 Sec. 2267.361. PROCEDURES FOR COMBINATION OF TECHNICAL AND
26 COST PROPOSALS. (a) A governmental entity shall request proposals
27 from design-build firms identified under Section 2267.359(c). A

1 firm must submit a proposal not later than the 180th day after the
2 date the governmental entity makes a public request for the
3 proposals from the selected firms. The request for proposals must
4 include:

5 (1) a design criteria package;

6 (2) if the project site is identified, a geotechnical
7 baseline report or other information that provides the design-build
8 firm minimum geotechnical design parameters to submit a proposal;

9 (3) detailed instructions for preparing the technical
10 proposal and the items to be included, including a description of
11 the form and level of completeness of drawings expected; and

12 (4) the relative weighting of the technical and price
13 proposals and the formula by which the proposals will be evaluated
14 and ranked.

15 (b) The technical proposal is a component of the proposal
16 under this section.

17 (c) Each proposal must include a sealed technical proposal
18 and a separate sealed cost proposal.

19 (d) The technical proposal must address:

20 (1) project approach;

21 (2) anticipated problems;

22 (3) proposed solutions to anticipated problems;

23 (4) ability to meet schedules;

24 (5) conceptual engineering design; and

25 (6) other information requested by the governmental
26 entity.

27 (e) The governmental entity shall first open, evaluate, and

1 score each responsive technical proposal submitted on the basis of
2 the criteria described in the request for proposals and assign
3 points on the basis of the weighting specified in the request for
4 proposals. The governmental entity may reject as nonresponsive any
5 firm that makes a significant change to the composition of its firm
6 as initially submitted. The governmental entity shall subsequently
7 open, evaluate, and score the cost proposals from firms that
8 submitted a responsive technical proposal and assign points on the
9 basis of the weighting specified in the request for proposals. The
10 governmental entity shall select the design-build firm in
11 accordance with the formula provided in the request for proposals.

12 Sec. 2267.362. NEGOTIATION. After selecting the
13 highest-ranked design-build firm under Section 2267.361, the
14 governmental entity shall first attempt to negotiate a contract
15 with the selected firm. If the governmental entity is unable to
16 negotiate a satisfactory contract with the selected firm, the
17 entity shall, formally and in writing, end all negotiations with
18 that firm and proceed to negotiate with the next firm in the order
19 of the selection ranking until a contract is reached or
20 negotiations with all ranked firms end.

21 Sec. 2267.363. ASSUMPTION OF RISKS. The governmental
22 entity shall assume:

23 (1) all risks and costs associated with:

24 (A) scope changes and modifications, as
25 requested by the governmental entity;

26 (B) unknown or differing site conditions unless
27 otherwise provided by the governmental entity in the request for

1 proposals and final contract;

2 (C) regulatory permitting, if the governmental
3 entity is responsible for those risks and costs by law or contract;
4 and

5 (D) natural disasters and other force majeure
6 events unless otherwise provided by the governmental entity in the
7 request for proposals and final contract; and

8 (2) all costs associated with property acquisition,
9 excluding costs associated with acquiring a temporary easement or
10 work area associated with staging or construction for the project.

11 Sec. 2267.364. STIPEND AMOUNT FOR UNSUCCESSFUL OFFERORS.

12 (a) Unless a stipend is paid under Subsection (c), the
13 design-build firm retains all rights to the work product submitted
14 in a proposal. The governmental entity may not release or disclose
15 to any person, including the successful offeror, the work product
16 contained in an unsuccessful proposal. The governmental entity
17 shall return all copies of the proposal and other information
18 submitted to an unsuccessful offeror. The governmental entity or
19 its agents may not make use of any unique or nonordinary design
20 element, technique, method, or process contained in the
21 unsuccessful proposal that was not also contained in the successful
22 proposal at the time of the original submittal, unless the entity
23 acquires a license from the unsuccessful offeror.

24 (b) A violation of this section voids the contract for the
25 project entered into by the governmental entity. The governmental
26 entity is liable to any unsuccessful offeror, or any member of the
27 design-build team or its assignee, for one-half of the cost savings

1 associated with the unauthorized use of the work product of the
2 unsuccessful offeror. Any interested party may bring an action for
3 an injunction, declaratory relief, or damages for a violation of
4 this section. A party who prevails in an action under this
5 subsection is entitled to reasonable attorney's fees as approved by
6 the court.

7 (c) The governmental entity may offer an unsuccessful
8 design-build firm that submits a response to the entity's request
9 for additional information under Section 2267.361 a stipend for
10 preliminary engineering costs associated with the development of
11 the proposal. The stipend must be one-half of one percent of the
12 contract amount and must be specified in the initial request for
13 proposals. If the offer is accepted and paid, the governmental
14 entity may make use of any work product contained in the proposal,
15 including the techniques, methods, processes, and information
16 contained in the proposal. The use by the governmental entity of
17 any design element contained in an unsuccessful proposal is at the
18 sole risk and discretion of the entity and does not confer liability
19 on the recipient of the stipend under this subsection.

20 (d) Notwithstanding other law, including Chapter 552, work
21 product contained in an unsuccessful proposal submitted and
22 rejected under this subchapter is confidential and may not be
23 released unless a stipend offer has been accepted and paid as
24 provided by Subsection (c).

25 Sec. 2267.365. COMPLETION OF DESIGN. (a) Following
26 selection of a design-build firm under this subchapter, the firm's
27 engineers shall submit all design elements for review and

1 determination of scope compliance to the governmental entity before
2 or concurrently with construction.

3 (b) An appropriately licensed design professional shall
4 sign and seal construction documents before the documents are
5 released for construction.

6 Sec. 2267.366. FINAL CONSTRUCTION DOCUMENTS. At the
7 conclusion of construction, the design-build firm shall supply to
8 the governmental entity a record set of construction documents for
9 the project prepared as provided by Chapter 1001, Occupations Code.

10 Sec. 2267.367. PERFORMANCE OR PAYMENT BOND. (a) A
11 performance or payment bond is not required for the portion of a
12 design-build contract under this section that includes design
13 services only.

14 (b) If a fixed contract amount or guaranteed maximum price
15 has not been determined at the time a design-build contract is
16 awarded, the penal sums of the performance and payment bonds
17 delivered to the governmental entity must each be in an amount equal
18 to the construction budget, if commercially available and
19 practical, as specified in the design criteria package.

20 (c) If the governmental entity awards a design-build
21 contract under Section 2267.362, the design-build firm shall
22 deliver the bonds not later than the 10th day after the date the
23 design-build firm executes the contract unless the design-build
24 firm furnishes a bid bond or other financial security acceptable to
25 the governmental entity to ensure that the design-build firm will
26 furnish the required performance and payment bonds before the
27 commencement of construction.

1 [Sections 2267.368-2267.400 reserved for expansion]

2 SUBCHAPTER I. JOB ORDER CONTRACTS METHOD

3 Sec. 2267.401. JOB ORDER CONTRACTING. In this chapter,
4 "job order contracting" is a procurement method used for
5 maintenance, repair, alteration, renovation, remediation, or minor
6 construction of a facility when the work is of a recurring nature
7 but the delivery times, type, and quantities of work required are
8 indefinite.

9 Sec. 2267.402. APPLICABILITY OF SUBCHAPTER TO BUILDINGS;
10 EXCEPTIONS. This subchapter applies only to a facility that is a
11 building, the design and construction of which is governed by
12 accepted building codes, or a structure or land, whether improved
13 or unimproved, that is associated with a building. This subchapter
14 does not apply to:

15 (1) a highway, road, street, bridge, utility, water
16 supply project, water plant, wastewater plant, water and wastewater
17 distribution or conveyance facility, wharf, dock, airport runway or
18 taxiway, drainage project, or related type of project associated
19 with civil engineering construction; or

20 (2) a building or structure that is incidental to a
21 project that is primarily a civil engineering construction project.

22 Sec. 2267.403. REQUIREMENTS FOR JOB ORDER CONTRACTS FOR
23 FACILITIES. (a) A governmental entity may award job order
24 contracts for the maintenance, repair, alteration, renovation,
25 remediation, or minor construction of a facility if:

26 (1) the work is of a recurring nature but the delivery
27 times are indefinite; and

1 (2) indefinite quantities and orders are awarded
2 substantially on the basis of predescribed and prepriced tasks.

3 (b) The governmental entity shall establish the maximum
4 aggregate contract price when it advertises the proposal.

5 (c) The governing body of a governmental entity shall
6 approve each job order that exceeds:

7 (1) \$500,000 under the contract; or

8 (2) a lesser amount as established by the governing
9 body.

10 Sec. 2267.404. CONTRACTUAL UNIT PRICES. The governmental
11 entity may establish contractual unit prices for a job order
12 contract by:

13 (1) specifying one or more published construction unit
14 price books and the applicable divisions or line items; or

15 (2) providing a list of work items and requiring the
16 offerors to propose one or more coefficients or multipliers to be
17 applied to the price book or prepriced work items as the price
18 proposal.

19 Sec. 2267.405. COMPETITIVE SEALED PROPOSAL METHOD. (a) A
20 governmental entity may use the competitive sealed proposal method
21 under Subchapter D for job order contracts.

22 (b) The governmental entity shall advertise for, receive,
23 and publicly open sealed proposals for job order contracts.

24 (c) The governmental entity may require offerors to submit
25 information in addition to rates, including experience, past
26 performance, and proposed personnel and methodology.

27 Sec. 2267.406. AWARING OF JOB ORDER CONTRACTS. The

1 governmental entity may award job order contracts to one or more job
2 order contractors in connection with each solicitation of
3 proposals.

4 Sec. 2267.407. USE OF JOB ORDER CONTRACT. A job order
5 contract may be used to accomplish work only for the governmental
6 entity that awards the contract unless:

7 (1) the solicitation for the job order contract and
8 the contract specifically provide for use by other persons; or

9 (2) the governmental entity enters into an interlocal
10 agreement that provides otherwise.

11 Sec. 2267.408. USE OF ARCHITECT OR ENGINEER. If a job order
12 contract or an order issued under the contract requires
13 architectural or engineering services that constitute the practice
14 of architecture within the meaning of Chapter 1051, Occupations
15 Code, or the practice of engineering within the meaning of Chapter
16 1001, Occupations Code, the governmental entity shall select or
17 designate an architect or engineer to prepare the construction
18 documents for the project.

19 Sec. 2267.409. JOB ORDER CONTRACT TERM. The base term for a
20 job order contract may not exceed two years. The governmental
21 entity may renew the contract annually for not more than three
22 additional years.

23 Sec. 2267.410. JOB ORDERS. (a) An order for a job or
24 project under a job order contract must be signed by the
25 governmental entity's representative and the contractor.

26 (b) The order may be:

27 (1) a fixed price, lump-sum contract based

1 substantially on contractual unit pricing applied to estimated
2 quantities; or

3 (2) a unit price order based on the quantities and line
4 items delivered.

5 Sec. 2267.411. PAYMENT AND PERFORMANCE BONDS. The
6 contractor shall provide payment and performance bonds, if required
7 by law, based on the amount or estimated amount of any order.

8 [Sections 2267.412-2267.450 reserved for expansion]

9 SUBCHAPTER J. ENFORCEMENT

10 Sec. 2267.451. VOID CONTRACT. (a) A contract, including a
11 job order, entered into in violation of this chapter and any bonds
12 issued in connection with the contract are voidable as against
13 public policy.

14 (b) An action to void a contract under this section does not
15 excuse the obligation of the governmental entity to pay for any
16 service performed or material delivered in good faith by a
17 contractor, architect, engineer, design-builder, or construction
18 manager before the date on which the contract is determined to be
19 void.

20 Sec. 2267.452. DECLARATORY OR INJUNCTIVE RELIEF. (a) This
21 chapter may be enforced through an action for declaratory or
22 injunctive relief filed not later than the 10th day after the date
23 on which the contract is awarded.

24 (b) This section does not apply to enforcement of a contract
25 entered into by a state agency. In this subsection, "state agency"
26 has the meaning assigned by Section 2151.002. The term includes the
27 Texas Facilities Commission.

1 SECTION 2.10. Section 252.048, Local Government Code, is
2 amended by adding Subsection (c-1) to read as follows:

3 (c-1) If a change order for a public works contract in a
4 municipality with a population of 500,000 or more involves a
5 decrease or an increase of \$100,000 or less, or a lesser amount as
6 provided by ordinance, the governing body of the municipality may
7 grant general authority to an administrative official of the
8 municipality to approve the change order.

9 SECTION 2.11. Section 271.054, Local Government Code, is
10 amended to read as follows:

11 Sec. 271.054. COMPETITIVE PROCUREMENT REQUIREMENT. Before
12 the governing body of an issuer may enter into a contract requiring
13 an expenditure by or imposing an obligation or liability on the
14 issuer, or on a subdivision of the issuer if the issuer is a county,
15 of more than \$50,000, the governing body must:

16 (1) submit the proposed contract to competitive
17 procurement; or

18 (2) use an alternate method of project delivery
19 authorized by Chapter 2267, Government Code.

20 SECTION 2.12. Section 271.060, Local Government Code, is
21 amended by amending Subsection (b) and adding Subsection (c) to
22 read as follows:

23 (b) The total price of a contract may not be increased by a
24 change order unless provision has been made for the payment of the
25 added cost by the appropriation of current funds or bond funds for
26 that purpose, by the authorization of the issuance of certificates,
27 or by a combination of those procedures.

1 Chapter 2267, Government Code, does not apply to this chapter.

2 SECTION 3.06. Section 370.305, Transportation Code, is
3 amended by adding Subsection (c-1) to read as follows:

4 (c-1) Chapter 2267, Government Code, does not apply to
5 agreements entered into pursuant to this section.

6 SECTION 3.07. Subchapter Q, Chapter 451, Transportation
7 Code, is amended by adding Section 451.8025 to read as follows:

8 Sec. 451.8025. EXEMPTION FROM OTHER CONTRACTING LAW.

9 Chapter 2267, Government Code, does not apply to this subchapter.

10 SECTION 3.08. Subchapter C, Chapter 452, Transportation
11 Code, is amended by adding Section 452.1095 to read as follows:

12 Sec. 452.1095. EXEMPTION FROM OTHER CONTRACTING LAW FOR
13 CERTAIN AUTHORITIES. Chapter 2267, Government Code, does not apply
14 to an authority consisting of one subregion governed by a
15 subregional board created under Subchapter O.

16 SECTION 3.09. Section 60.401, Water Code, is amended by
17 adding Subsection (d) to read as follows:

18 (d) Chapter 2267, Government Code, does not apply to this
19 subchapter.

20 SECTION 3.10. Section 60.452(c), Water Code, is amended to
21 read as follows:

22 (c) Chapter 2267, [~~Subchapter J, Chapter 271, Local~~]
23 Government Code, does not apply to this subchapter.

24 ARTICLE 4. CONFORMING AMENDMENTS

25 SECTION 4.01. Section 252.021(a), Local Government Code, is
26 amended to read as follows:

27 (a) Before a municipality may enter into a contract that

1 requires an expenditure of more than \$50,000 from one or more
2 municipal funds, the municipality must:

3 (1) comply with the procedure prescribed by this
4 subchapter and Subchapter C for competitive sealed bidding or
5 competitive sealed proposals;

6 (2) use the reverse auction procedure, as defined by
7 Section 2155.062(d), Government Code, for purchasing; or

8 (3) comply with a method described by Chapter 2267,
9 Government Code [~~Subchapter H or J, Chapter 271~~].

10 SECTION 4.02. Section 252.022(d), Local Government Code, is
11 amended to read as follows:

12 (d) This chapter does not apply to an expenditure described
13 by Section 252.021(a) if the governing body of a municipality
14 determines that a method described by Chapter 2267, Government Code
15 [~~Subchapter H, Chapter 271~~], provides a better value for the
16 municipality with respect to that expenditure than the procedures
17 described in this chapter and the municipality adopts and uses a
18 method described in that subchapter with respect to that
19 expenditure.

20 SECTION 4.03. Sections 252.043(d-1) and (e), Local
21 Government Code, are amended to read as follows:

22 (d-1) A contract for construction of a project described by
23 Subsection (d) that requires an expenditure of \$1.5 million or less
24 may be awarded using the competitive sealed proposal procedure
25 prescribed by Subchapter D, Chapter 2267, Government Code [~~Section~~
26 ~~271.116~~].

27 (e) If the competitive sealed bidding requirement applies

1 to the contract for construction of a facility, as that term is
2 defined by Section 2267.001, Government Code [~~Section 271.111~~], the
3 contract must be awarded to the lowest responsible bidder or
4 awarded under the method described by Chapter 2267, Government Code
5 [~~Subchapter H, Chapter 271~~].

6 SECTION 4.04. Sections 262.023(a) and (b-1), Local
7 Government Code, are amended to read as follows:

8 (a) Before a county may purchase one or more items under a
9 contract that will require an expenditure exceeding \$50,000, the
10 commissioners court of the county must:

11 (1) comply with the competitive bidding or competitive
12 proposal procedures prescribed by this subchapter;

13 (2) use the reverse auction procedure, as defined by
14 Section 2155.062(d), Government Code, for purchasing; or

15 (3) comply with a method described by Chapter 2267,
16 Government Code [~~Subchapter H, Chapter 271~~].

17 (b-1) A county that complies with a method described by
18 Chapter 2267, Government Code [~~Subchapter H, Chapter 271~~], as
19 provided by Subsection (a)(3), to enter into a contract for which
20 payment will be made through anticipation notes authorized by
21 Chapter 1431, Government Code, may not issue anticipation notes for
22 the payment of that contract in an amount that exceeds the lesser
23 of:

24 (1) 20 percent of the county's budget for the fiscal
25 year in which the county enters into the contract; or

26 (2) \$10 million.

27 SECTION 4.05. Section 1002.110, Special District Local Laws

1 Code, is amended to read as follows:

2 Sec. 1002.110. PUBLIC WORKS CONTRACTS. With respect to the
3 construction of public works, the district has all of the powers and
4 duties conferred on a municipality under Chapter 2267, [~~Subchapter~~
5 ~~H, Chapter 271, Local~~] Government Code, with respect to the
6 construction of a facility. To the extent of any conflict, this
7 section prevails over any other law relating to the construction of
8 public works engaged in by the district.

9 SECTION 4.06. Section 1024.105(b), Special District Local
10 Laws Code, is amended to read as follows:

11 (b) The board may act as a governmental entity under Chapter
12 2267, [~~Subchapter H, Chapter 271, Local~~] Government Code, for
13 purposes of using the procurement procedures authorized by that
14 chapter. For purposes of this subsection, notice under Section
15 2267.052(c), [~~271.112(d), Local~~] Government Code, must be provided
16 by the district in the same manner as provided for a conservation
17 and reclamation district created under Section 59, Article XVI,
18 Texas Constitution.

19 SECTION 4.07. Section 366.185(d-1), Transportation Code,
20 is amended to read as follows:

21 (d-1) The rules adopted under Subsection (d) may not
22 materially conflict with the design-build procedures provided by
23 Subchapter H, Chapter 2267, [~~Subchapter J, Chapter 271, Local~~]
24 Government Code, and shall provide materially similar injunctive
25 and declaratory action enforcement rights regarding the improper
26 disclosure or use of unique or nonordinary information as provided
27 in that subchapter.

1 SECTION 4.08. Section 370.314(b), Transportation Code, is
2 amended to read as follows:

3 (b) Procedures adopted under Subsection (a) may not
4 materially conflict with the design-build procedures provided by
5 Subchapter H, Chapter 2267, [~~Subchapter J, Chapter 271, Local~~]
6 Government Code.

7 SECTION 4.09. Sections 460.406(c) and (d), Transportation
8 Code, are amended to read as follows:

9 (c) The board of directors may authorize the negotiation of
10 a contract without competitive sealed bids or proposals if:

11 (1) the aggregate amount involved in the contract is
12 \$25,000 or less;

13 (2) the contract is for construction for which not
14 more than one bid or proposal is received;

15 (3) the contract is for services or property for which
16 there is only one source or for which it is otherwise impracticable
17 to obtain competition;

18 (4) the contract is to respond to an emergency for
19 which the public exigency does not permit the delay incident to the
20 competitive process;

21 (5) the contract is for personal or professional
22 services or services for which competitive bidding is precluded by
23 law;

24 (6) the contract, without regard to form and which may
25 include bonds, notes, loan agreements, or other obligations, is for
26 the purpose of borrowing money or is a part of a transaction
27 relating to the borrowing of money, including:

1 (A) a credit support agreement, such as a line or
2 letter of credit or other debt guaranty;

3 (B) a bond, note, debt sale or purchase, trustee,
4 paying agent, remarketing agent, indexing agent, or similar
5 agreement;

6 (C) an agreement with a securities dealer,
7 broker, or underwriter; and

8 (D) any other contract or agreement considered by
9 the board of directors to be appropriate or necessary in support of
10 the authority's financing activities;

11 (7) the contract is for work that is performed and paid
12 for by the day as the work progresses;

13 (8) the contract is for the purchase of land or a
14 right-of-way;

15 (9) the contract is for the purchase of personal
16 property sold:

17 (A) at an auction by a state licensed auctioneer;

18 (B) at a going out of business sale held in
19 compliance with Subchapter F, Chapter 17, Business & Commerce Code;
20 or

21 (C) by a political subdivision of this state, a
22 state agency, or an entity of the federal government;

23 (10) the contract is for services performed by blind
24 or severely disabled persons;

25 (11) the contract is for the purchase of electricity;
26 or

27 (12) the contract is one awarded for alternate project

1 delivery under Subchapters E, F, and G, Chapter 2267, [Sections
2 271.117-271.119, Local] Government Code.

3 (d) For the purposes of entering into a contract authorized
4 by Subsection (c)(12), an authority is considered a "governmental
5 entity" as described [~~defined~~] by Section 2267.002, [271.111,
6 ~~Local]~~ Government Code.

7 ARTICLE 5. REPEALER

8 SECTION 5.01. The following are repealed:

9 (1) Sections 44.0315, 44.035, 44.036, 44.037, 44.038,
10 44.039, 44.040, and 44.041, Education Code;

11 (2) Sections 2166.2511, 2166.2526, 2166.2531,
12 2166.2532, 2166.2533, and 2166.2535, Government Code;

13 (3) Subchapters H and J, Chapter 271, Local Government
14 Code; and

15 (4) Section 431.101(e), Transportation Code.

16 ARTICLE 6. TRANSITION; EFFECTIVE DATE

17 SECTION 6.01. (a) The changes in law made by this Act apply
18 only to a contract or construction project for which a governmental
19 entity first advertises or otherwise requests bids, proposals,
20 offers, or qualifications, or makes a similar solicitation, on or
21 after the effective date of this Act.

22 (b) A contract or construction project for which a
23 governmental entity first advertises or otherwise requests bids,
24 proposals, offers, or qualifications, or makes a similar
25 solicitation, before the effective date of this Act is governed by
26 the law as it existed immediately before the effective date of this
27 Act, and that law is continued in effect for that purpose.

1 SECTION 6.02. This Act takes effect September 1, 2011.